

Medical Services

Consent to Medical Care by Nonmilitary Patients and Minors, and Mentally Incompetent Military and Nonmilitary Patients

Headquarters
U.S. Army Medical Department Activity
Fort George G. Meade
2480 Llewellyn Avenue
Fort George G. Meade, MD 20755-5800
16 January 2003

Unclassified

SUMMARY of CHANGE

MEDDAC REG 40-5

Consent to Medical Care by Nonmilitary Patients and Minors, and Mentally Incompetent
Military and Nonmilitary Patients

Specifically, this revision—

- o Has been published in a new format that includes a cover and this “Summary of Change” page.
- o Reformats the title page. The Contents section now includes the page numbers that the various chapters and paragraphs begin on.
- o Changes the proponent of the regulation from the Chief, Patient Administration Division to the Deputy Commander for Clinical Services
- o Removes paragraph 3-6 (Consent for blood alcohol testing) because blood alcohol testing is no longer performed by Kimbrough Ambulatory Care Center. Paragraph 3-7 (Counseling the consenting individual) is now paragraph 3-6.

Department of the Army
Headquarters
United States Army Medical Department Activity
2480 Llewellyn Avenue
Fort George G. Meade, Maryland 20755-5800
16 January 2003

*** MEDDAC/DENTAC
Regulation 40-5**

Medical Services

Consent to Medical Care by Non-military Patients and Minors, and Mentally Incompetent Military and Non-military Patients

FOR THE COMMANDER:

DAVID A. BITTERMAN
LTC, MS
Deputy Commander for Administration

PATRICE E. GREENE
COL, DE
Commanding

Official:



JOHN SCHNEIDER
Adjutant

History. This is the third revision of this regulation, which was originally published on 18 September 1992.

Summary. This regulation establishes responsibilities, policies and procedures regarding medical and dental services to non-military patients and minors by medical treatment facilities (MTFs) of the U.S. Army Medical Department Activity, Fort George G. Meade (MEDDAC), and dental treatment facilities (DTFs) of the U.S. Army Dental Activity, Fort George G. Fort Meade (DENTAC).

Applicability. This regulation applies to the MEDDAC headquarters (Kimbrough Ambulatory Care Center (KACC)), all outlying U.S. Army health clinics (USAHCs) of the MEDDAC, and the DENTAC.

Proponent. The proponent of this

regulation is the Deputy Commander for Clinical Services (DCCS).

Supplementation. Supplementation of this regulation is authorized in accordance with paragraph 1-4b.

Suggested improvements. Users of this publication are invited to send comments and suggested improvements, by memorandum, directly to the Commander, U.S. Army Medical Department Activity, ATTN: MCXR-ZC, Fort George G. Meade, MD 20755-5800, or to the MEDDAC's Command Editor by e-mail to john.schneider@na.amedd.army.mil or by fax to (301) 677-8088.

Distribution. Distribution of this publication is by electronic medium only.

Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

- Purpose • 1-1, *page 1*
- References • 1-2, *page 1*
- Explanation of abbreviations and terms • 1-3, *page 1*
- Responsibilities • 1-4, *page 1*
- Use of the term "staff duty" • 1-5, *page 2*

* This publication supersedes MEDDAC/DENTAC Reg 40-5, dated 14 September 2001.

Contents—continued

Chapter 2

General Provisions of Laws and Regulations, *page 2*

Prohibitions established by laws and regulations • 2-1, *page 2*

Sufficiency of legal “general” consent • 2-2, *page 3*

Informed consent • 2-3, *page 3*

Chapter 3

Types of Consent and How to Obtain Them, *page 3*

General and informed consent • 3-1, *page 3*

Consent of spouse or next of kin for non-military patients • 3-2, *page 4*

Consent powers of attorney • 3-3, *page 4*

Consent for mentally incompetent patients • 3-4, *page 4*

Consent to treat minors for health related problems, drug abuse, venereal disease, pregnancy, contraception (other than sterilization), and to obtain evidence of an alleged sexual offense
• 3-5, *page 5*

Consent for blood alcohol testing • 3-6, *page 5*

Counseling the consenting individual • 3-7, *page 5*

Appendixes

A. References, *page 6*

B. Annotated Code of Maryland; Title 20, Miscellaneous Health Provisions; Subtitle 1, Consent Provisions; Part I, Minors, *page 6*

C. Purdon’s Pennsylvania Statutes and Consolidated Statutes Annotate, Title 35. Health and Safety, Chapter 50 General Provisions, *page 8*

Glossary

Chapter 1

Introduction

1-1. Purpose

This regulation establishes responsibilities, policies and procedures for providing medical treatment to non-military patients and minors by MTFs of the MEDDAC and DTFs of the DENTAC.

1-2. References

Required and related publications are listed in appendix A. Referenced forms are also listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

a. *The MEDDAC Commander.* The MEDDAC Commander will authorize temporary detainment of non-military personnel who are determined to be mentally incompetent and coordinate the transfer of such persons to civilian hospitals with the Chief, Behavioral Health Care Service (BHCS).

b. *The DENTAC Commander, and commanders, directors and supervisors of outlying MTFs and DTFs.* The DENTAC commander and commanders, directors and supervisors of outlying MTFs and DTFs will—

(1) Implement this regulation within their respective facilities and, as necessary, provide local implementing instructions.

(2) Establish procedures with the Chief, BHCS at KACC, the Chief, PAD at KACC, local military and civilian hospitals, and local civilian authorities to establish procedures for the transfer of non-military individuals who are temporarily detained by the MEDDAC Commander because they exhibit signs of psychotic behavior or they present a danger to themselves and others. Periodically reaffirm agreements with local hospitals and authorities and inform the Chief, BHCS and Chief, PAD of any changes.

(3) Authorize temporary detainment of non-military personnel who exhibit signs of psychotic behavior or are dangerous to themselves and others, and coordinate the transfer of such persons to civilian hospitals with the Chief, BHCS at KACC.

(4) Provide explicit instructions regarding the paragraphs of this regulation that require interaction by administrative officer of the day (AOD), staff duty (SD) and charge of quarters (CQ) personnel at the MEDDAC's MTFs and DENTAC's DTFs, to be written into the AOD, SD and CQ instructions by the commanders of the MEDDAC's Medical Company and the detachment commanders of the outlying MTFs and all DTFs belonging to DENTAC. These instructions will include all point of contact telephone numbers. Outlying MTFs that do not have medical detachments and outlying DTFs that do not have dental detachments, and or do not have an AOD, SD or CQ function, will ensure procedures are in place to handle urgent matters regarding this regulation during non-duty hours.

c. *The Chief, BHCS.* The Chief, BHCS will—

(1) Establish procedures with the Chief, PAD, local military and civilian hospitals, and local civilian authorities to establish procedures for the transfer of non-military individuals who are

temporarily detained by the MEDDAC Commander because they exhibit signs of psychotic behavior or are dangerous to themselves and others.

(2) Ensure all outlying USAHCs comply with paragraph 1-4b(2), above.

(3) Expeditiously coordinate the transfer to civilian authorities of non-military personnel who have been temporarily detained by the commander, director or supervisor of any MEDDAC MTF because of psychotic behavior or who present a danger to themselves or to others.

d. *The Chief, PAD.* The Chief PAD will—

(1) During duty hours, consult the Office of the Staff Judge Advocate (SJA), Fort George G. Meade regarding questions of authority or need for consent when a patient is unable to respond and there is no spouse or next of kin available, except in an emergency.

(2) Provide explicit instructions regarding the paragraphs of this regulation that require interaction by the AOD to the Medical Company commander for inclusion in the AOD instructions. These instructions will include all point of contact telephone numbers.

e. *The Medical Company commander and medical detachment commanders.* The Medical Company commander and medical detachment commanders will ensure that information provided to them by the Chief, PAD, or outlying USAHC commander or director, as appropriate, is incorporated in the MTF's AOD, SD or CQ instructions. If an outlying USAHC has a medical detachment but does not have an AOD, SD or CQ function, the detachment commander will devise another means to implement the off-duty instructions from the MTF commander or director to implement certain paragraphs of this regulation.

f. *AOD, SD and CQ personnel.* AOD, SD and CQ personnel will comply with the instructions provided in their AOD, SD or CQ instructions. Problems or inaccuracies in such instructions will be noted in the AOD, SD or CQ Log.

1-5. Use of the term “staff duty”

Throughout the rest of this regulation, the term “staff duty” and its associated acronym, “SD”, represent the following types of duty personnel: administrative officer of the day (AOD), staff duty (SD), and charge of quarters (CQ).

Chapter 2

General Provisions of Laws and Regulations

2-1. Prohibitions established by laws and regulations

a. Non-military individuals (anyone who is not on active duty with the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marines or U.S. Coast Guard) may not be furnished medical care in any Army MTF without first obtaining one of the following:

(1) The individual's consent or the consent of a person authorized to consent on the individual's behalf according to local laws.

(2) The order of a court having jurisdiction over both the individual and the MTF concerned.

(3) A power of attorney to consent on the patient's behalf.

b. Consent may be either expressed or implied.

2-2. Sufficiency of legal “general” consent

a. For general consent to be legally sufficient, whether expressed or implied, it must be given by a person legally capable of giving such consent. (The terms “expressed consent” and “implied consent” are defined in the glossary.) Legal capability is determined by federal law, or state law if the state’s law is not pre-empted by federal law. The sufficiency of a consent by a non-military minor to any medical examination or treatment will likewise be determined by the laws of the state in which the MTF is located. See appendix B for the Maryland statute regarding treatment of minors for health-related problems and appendix C for Pennsylvania’s statute.

b. Age of majority for non-military patients. In Maryland and Pennsylvania, 18 is considered the legal age of majority. Therefore, the consent of a nonmilitary patient 18 years old and over is legally sufficient and his or her decision authorizing proposed treatment is binding.

c. Age of majority for military patients. Military patients (patients who are currently on active duty with one of the armed services listed in paragraph 2-1a, above) who would otherwise be minors are considered to be emancipated and, therefore, capable of consent as if they were adults.

2-3. Informed consent

While general consent (see paragraph 2-2, above) is necessary prior to treatment, such consent, elicited and reflected on Standard Form (SF) 522 (Medical Record-Request for Administration of Anesthesia and for Performance of Operations and other Procedures), should not be considered blanket consent for any treatment deemed necessary during the course of treatment. Failure to obtain an informed consent may subject the treating physician(s), nurse(s) and or specialist(s) to criminal and or civil liability.

Chapter 3

Types of Consent and How to Obtain Them

3-1. General and informed consent

a. A written consent must be recorded on SF 522 whenever non-military patients are involved with the following:

(1) All major and minor surgery which involves an entry into the body, either through an incision or through one of the natural body openings.

(2) Any procedure or course of treatment in which anesthesia is used, whether or not an entry into the body is involved.

(3) All non-operative procedures which involve more than a slight risk of harm to the patient or which involves the risk of change in the patient’s body structure.

(4) All procedures where x-ray, radium or other radioactive substance is used in the treatment of the patient.

(5) All procedures which involve electric shock or insulin coma therapy.

(6) All other procedures that, in the opinion of the attending physician or dentist, chief of service, or the commander, require a written consent.

b. Any question as to the necessity or advisability of obtaining a written consent from or on behalf of a patient should be resolved in favor of procuring such a consent.

c. When a written consent is required, it will be personally signed by the patient or the person authorized to act on the patient’s behalf.

d. Consent for dental procedures may be obtained at the time a course of treatment is started. One SF 522 may be used for a complete course of treatment; however, it should not be considered adequate informed consent for each procedure performed during the course of treatment. Patients should be informed as to the nature, extent and risks involved for each separate procedure performed over the course of treatment and should consent to each separate procedure on the SF 522.

e. In circumstances where the consent of a minor patient alone is not legally sufficient, his or her consent must be obtained if the attending physician determines the patient is capable of understanding the procedure contemplated. Nevertheless, consent of a parent or guardian must always be obtained.

3-2. Consent of spouse or next of kin for non-military patients

Except in an emergency, when the patient is unable to respond for some reason, the consent of the spouse or next of kin must be obtained. If the spouse or next of kin cannot be reached, the question of authority or need for consent will be referred to the Chief, PAD; after normal duty hours to the SD. The chief or SD will consult the installation SJA.

3-3. Consent powers of attorney

a. Parents and legal guardians may grant powers of attorney to—

(1) Mature minor children to consent to medical care for themselves and other minor children of the family.

(2) Individuals in a temporary loco parentis status (aunts, uncles, grandparents, and similar relatives) authorizing them to consent to medical care for minor children of the family.

(3) Other persons appointed by the parents or legal guardians.

b. Such powers of attorney will be issued by an SJA office. Parents and legal guardians seeking consent powers of attorney should be directed to the SJA office that supports the MTF. In some cases, this may be on another installation.

3-4. Consent for mentally incompetent patients

a. When a medical interpretation of mental incompetence has been made regarding a military or non-military patient, consent must be obtained from an individual appointed by a court to act on behalf of the patient.

b. When the question of mental competency arises and a judicial determination of mental competency has not been made, the question of authority to consent or treat will be referred to the Chief, PAD; after normal duty hours to the staff duty. The chief or SD will consult the installation SJA.

c. If a non-military individual exhibits an apparent psychiatric disorder that is dangerous to the individual or to others, an MTF commander or director may temporarily detain the individual, whether found on the installation or at an off-post emergency site, without appropriate court order or consent of the individual or person authorized to act on the individual's behalf. In such cases, the Chief, PAD will be notified immediately; after duty hours, the SD. The individual should be transferred to civilian authorities as soon as possible.

d. It is emphasized that the temporary involuntary detention of a non-military individual should conform with Maryland or Pennsylvania statutes governing involuntary detention; particularly where the United States does not possess exclusive jurisdiction. In order to provide for situations herein discussed, arrangements should be made in advance by the Chief, BHCS with the

Chief, PAD, local military hospitals (for non-military authorized beneficiaries only), local civilian hospitals, and local civilian authorities to accept those non-military psychotic individuals who are found on an installation serviced by a MEDDAC MTF, or who are found at an off-post emergency site by paramedics or other staff of the MTF. The MTF commander or director must be notified and he or she must coordinate with the Chief, BHCS at KACC for authorization to transfer a detained, mentally incompetent individual.

e. Movement of non-military psychotic individuals without proper authorization or court order will not be performed by elements of this MEDDAC.

f. The validity of a court order directing involuntary confinement or treatment of a patient in any Army MTF is a matter for review. In each instance, the Chief, PAD will be notified of receipt of such an order; who will coordinate with the SJA.

3-5. Consent to treat minors for health related problems, drug abuse, venereal disease, pregnancy, contraception (other than sterilization), and to obtain evidence of an alleged sexual offense

Maryland state law allows the treatment of minors for health related problems, drug abuse, venereal disease, pregnancy, contraception (other than sterilization), and to obtain evidence of an alleged sexual offense with the consent of the minor alone. The parents need neither to be informed nor their consent obtained. MTF commanders and directors at USAHCs in Pennsylvania will be familiar with the Pennsylvania state law regarding this subject and abide by it. Questionable cases will be addressed to the local SJA and the MEDDAC Commander advised.

3-7. Counseling the consenting individual

a. The physician or dentist who is to perform or supervise the performance of a procedure will counsel the patient and or the consenting individual as to the nature of the expected results and risks of the proposed procedure, which is attested to by the patient or person authorized to give consent and by the counseling physician or dentist on SF 522.

b. The physician's or dentist's signature on SF 522 signifies his or her belief that the person giving the consent understands that consent is being given and, to a sufficient degree, the possible consequences of the procedures for which consent is given.

Appendix A References

Section I Required Publications

This section contains no entries.

Section II Related Publications

A related reference is merely a source of additional information, the user does not have to read it to understand this regulation.

AR 40-3
Medical, Dental, and Veterinary Care

AR 310-25
Dictionary of United States Army Terms

AR 310-50
Authorized Abbreviations, Brevity Codes, and Acronyms

Section III Prescribed Forms

This section contains no entries.

Referenced Forms Section IV

SF 522
Medical Record-Request for Administration of Anesthesia and for Performance of Operations and Other Procedures

Appendix B Annotated Code of Maryland; Title 20, Miscellaneous Health Provisions; Subtitle 1, Consent Provisions; Part I, Minors

§ 20-102 Treatment for health-related problems.

(a) *Minor who is married or parent.* -- A minor has the same capacity as an adult to consent to medical treatment if the minor:

- (1) Is married; or
- (2) Is the parent of a child.

(b) *Emergency Treatment.* -- A minor has the same capacity as an adult to consent to medical treatment if, in the judgment of the attending physician, the life or health of the minor would be affected adversely by delaying treatment to obtain the consent of another individual.

(c) *Consent for specific treatment.* -- A minor has the same capacity as an adult to consent to:

- (1) Treatment for or advice about drug abuse;
- (2) Treatment for or advice about alcoholism;
- (3) Treatment for or advice about venereal disease;
- (4) Treatment for or advice about pregnancy;
- (5) Treatment for or advice about contraception other than sterilization;
- (6) Physical examination and treatment of injuries from an alleged rape or sexual offense;
- (7) Physical examination to obtain evidence of an alleged rape or sexual offense; and
- (8) Initial medical screening and physical examination on and after admission of the minor into a detention center.

(c-1) *Capacity to refuse treatment.* -- The capacity of a minor to consent to treatment for drug abuse or alcoholism under subsection (c)(1) or (2) of this section does not include the capacity to refuse treatment for drug abuse or alcoholism in an inpatient alcohol or drug abuse treatment program certified under Title

8 of this article for which a parent or guardian has given consent.

(d) *Liabilities*. -- A physician or an individual under the direction of a physician who treats a minor is not liable for civil damages or subject to any criminal or disciplinary penalty solely because the minor did not have capacity to consent under this section.

(e) *Disclosure*. -- Without the consent of or over the express objection of a minor, the attending physician or, on advice or direction of the attending physician, a member of the medical staff of a hospital or public clinic may, but not need to, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor under this section, except information about an abortion.

(An. Code 1957, art. 43, SS 135, 135B, 1982, ch. 21, S 2; 1992, chs. 494, 495; 1994, ch. 175; 1995, ch. 473.)

§ 20-103 **Abortion.**

(a) *Notice required*. -- Except as provided in subsections (b) and (c) of this section, a physician may not perform an abortion on an unmarried minor unless the physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor.

(b) *Incomplete notice*. -- The physician may perform the abortion without notice to a parent or guardian if:

(1) The minor does not live with a parent or guardian; and

(2) A reasonable effort to give notice to a parent or guardian is unsuccessful.

(c) *Waiver of notice authorized*. -- (1) The physician may perform the abortion, without notice to a parent or guardian of a minor if, in the professional judgment of the physician:

(i) Notice to the parent or guardian may lead to physical or emotional abuse of the minor;

(ii) The minor is mature and capable of giving informed consent to an abortion; or

(iii) Notification would not be in the best interest of the minor.

(2) The physician is not liable for civil damages or subject to a criminal penalty for a decision under this subsection not to give notice.

(d) *Notice prohibited*. -- A physician may not provide notice to a parent or guardian if the minor decides not to have the abortion.

(An. Code 1957, art. 43, S 135; 1982, ch. 21, S2; 1983, ch 563; 1991, ch.1.)

§ 20-104 **Mental or emotional disorder.**

(a) *Capacity to consent*. -- A minor who is 16 years or older has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by a physician or a clinic.

(b) *Disclosure*. -- Without the consent of or over the express objection of a minor, the attending physician or, on advice or direction of the attending physician, a member of the medical staff of a hospital or public clinic may, but need not, give a parent, guardian, or custodian of the minor or the spouse of the parent information about treatment needed by the minor or provided to the minor under this section.

(c) *Liabilities*. -- Unless the parent, guardian, or custodian of a minor consents to consultation, diagnosis, or treatment of the minor, the parent, guardian, or custodian is not liable for any costs of the consultation, diagnosis, or treatment of the minor under this section.

(An. Code 1957, art. 43, S 135A; 1982, ch 21, S2.)

Appendix C

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotate, Title 35. Health and Safety, Chapter 50 General Provisions

10001. Blood donations; minor's consent.

(a) Any person of the age of seventeen years or over shall be eligible to donate blood in any voluntary and noncompensatory program without the necessity of obtaining parental permission or authorization.

10101. Individual consent.

(a) Any minor who is eighteen years of age or older, or has graduated for high school, or has married, or has been pregnant, may give effective consent to medical, dental, and health services for himself or herself, and the consent of no other person shall be necessary.

10102. Consent for children with minor parents.

(a) Any minor who has been married or has borne a child may give effective consent to medical, dental and health services for his or her child.

10103. Pregnancy, venereal disease and other reportable diseases.

(a) Any minor may give effective consent for medical and health services to determine the presence of or to treat pregnancy and venereal disease and other diseases reportable under the act of April 23, 1956 (P.L. 1510), known as the "Disease Prevention and Control Law of 1955," [FN1] and the consent of no other person shall be necessary.

10104 When consent unnecessary

(a) Medical, dental and health services may be rendered to minors of any age without the consent of a parent or legal guardian when, in the physician's judgement, an attempt to secure consent would result in delay of treatment which would increase the risk to the minor's life or health.

10105. Liability for rendering service

(a) The consent of a minor who professes to be, but is not a minor whose consent alone is effective to medical, dental and health services shall be deemed effective without the consent of the minor's parent or legal guardian, if the physician or other person relied in good faith upon the representations of the minor.

Admin. Code Ancillaries Council on Drug, Alcohol Abuse 71 P.S. 1690.113

1690.112. Consent of minor

(a) Notwithstanding any other provisions of law, a minor who suffers from the use of a controlled or harmful substance may give consent to furnishing of medical care or counseling related to diagnosis or treatment. The consent of the parents or legal guardian of the minor shall not be necessary to authorize medical care or counseling related to such diagnosis or treatment. The consent of the minor shall be valid and binding as if the minor had achieved his majority. Such consent shall not be voidable nor subject to later disaffirmance because of minority. Any physician or any agency or organization operating a drug abuse program, who provides counseling to a minor who uses any controlled or harmful substance may, but shall not be obligated to inform the parents or legal guardian of any such minor as to the treatment given or needed. 1972, April 14, P.L. 221, No 63 12

521.14a. Treatment of minors

(a) Any person under the age of twenty-one year infected with a venereal disease may be given appropriate treatment by a physician. If the minor consents to undergo treatment, approval or consent of his parents or persons in loco parentis shall not be necessary and the physician shall not be sued or held liable for properly administering appropriate treatment to the minor.

1956, April 23, P.L. (1995) 1510, 14.1, added 1971, Dec 1, P.L. 590,, No. 156, 1. imd. effective.

Glossary

Section I

Abbreviations

AOD

administrative officer of the day

BHCS

Behavioral Health Care Service

CQ

charge of quarters

DENTAC

U.S. Army Dental Activity, Fort George G. Meade

DTF

dental treatment facility

KACC

Kimbrough Ambulatory Care Center

MEDDAC

U.S. Army Medical Department Activity, Fort George G. Meade

MTF

medical treatment facility

PAD

Patient Administration Division

SD

staff duty

SF

standard form

SJA

staff judge advocate

USAHC

U.S. Army health clinic

Section II

Terms

Expressed consent

A consent which involves an interchange of language by which the patient or person authorized to act on his behalf specifically states that his consent is given to proposed

medical care.

Implied consent

A consent that is indirectly expressed by the actions of the patient or other circumstances. Although specific words of consent are not used, a patient's application for admission to the MTF for medical treatment is an implied consent. Consent to treatment is also implied in certain emergency situations where a patient is incapable of giving or denying consent, and this condition represents a serious or imminent threat to the patient's life, health, or well-being.

Staff duty

Within this regulation, the term staff duty is used to represent the staff duty, administrative officer of the day, and charge of quarters functions.